IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.7.2006

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(PD) No.1659 of 2004

A/m Prasanna Vinayagar Temple, Minjur
rep. by its trustees
1. C.R.Deivasigamani Chettiar
2.C.R.Shanmugha Chettiar
3.P.M.Ranganathan

Cause title accepted vide order
dt.17.8.04 made in C.M.P.No.13944/04 .. Petitioners

vs.

Duraibabu Thambiran .. Respondent

Revision Petition filed against the order dated 6.4.2004, passed in I.A.No.813/1999 in O.S.No.163/1994, on the file of the District Munsif Court, Ponneri.

For Petitioners : Mrs.J.Anandavalli
For Respondent : Mr.R.Sundaramoorthy

ORDER:

This revision petition has been filed against the order dated 6.4.2004 passed by the District Munsif Court, Ponneri in I.A.No.813/1999 in O.S.No.163/1994.

2. The plaintiff temple represented by its four trustees in O.S.No.163/94 on the file of the District Munsif Court, Ponneri along with the 6th petitioner/proposed plaintiff in I.A.No.813/99 are the revision petitioners.

3. O.S.No.163/94 was filed by Arulmigu Prasanna Vinayagar Temple, Minjur, represented by its four trustees for permanent injunction against the defendants. Pending the suit 1st trustee Mr.P.N.Munusamy Chettiar died on 5.11.1997. It is stated by the proposed 6th plaintiff in his affidavit filed in support of I.A.No.813/99 that he was appointed as a trustee for the plaintiff-temple in the place of the deceased P.N.Munusamy Chettiar by the

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other trustees. Hence he filed the petition to implead himself as the 6th plaintiff in the suit. I.A.No.813/99 was seriously opposed by the defendants in the suit by contending that the proposed 6th plaintiff cannot be impleaded as a party to the suit proceedings in the place of P.N.Munusamy Chettiar and the other trustees have no right to appoint him as a trustee. The trial Judge by an order dated 6.4.2004 dismissed the I.A.No.813/99 and aggrieved by the same, the above Revision Petition has been filed.

4. Heard the learned counsel for the revision petitioners and the learned counsel for the respondent. I have also perused the documents filed and the judgments referred to in support of their submissions.

5. Learned counsel for the revision petitioners submitted that the trial court ought to have allowed the Application as substitution of a new trustee in the place of the deceased trustee will not cause any prejudice to the defendants in the suit. She further submitted that the suit was filed by the Trust Board which is a joint and corporate and therefore it must be represented by all the trustees.

6. She relied on the following judgments in support of her contentions:-
(1) AIR 1969 Mad. 108 (Tirumalaisami v. Villagers of Kadambur
(2) 1998-III M.L.J. 28 (Mooka Velar v. The Commissioner, H.R. and C.E. Department)
(3) 2000(2) Supreme 195 (D.Srinivasan v. The Commissioner & Ors.)

7. Per contra, the learned counsel for the respondent submitted that under Order 1 Rule 10 of the Code of Civil Procedure a party can be impleaded only when his presence is necessary and proper for an effective adjudication of the dispute involved in the suit. He further submitted that when the temple is maintained by Hindu Religious and Charitable Endowments department, the power to appoint the trustees is vested with the authorities under the Act and hence the proposed 6th plaintiff could not have been appointed as trustee by the other trustees and therefore there is no illegality or infirmity in the order of the trial court warranting interference by this court under Article 227 of the Constitution of India.

8. The plaint filed in O.S.No.163/1994 shows that the plaintiff is a temple represented by its four trustees and it is not stated in the plaint that the suit is filed by the Trust Board as contended by the learned counsel for the revision petitioners. Moreover already two trustees are representing the temple in the suit and in such circumstances one more trustee to represent the temple is not a necessary party.

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9. In AIR 1969 Mad. 108 (supra), it is stated as under:-

> "8. As regards the plea of non-joinder of other trustees, no doubt where a religious institution has plurality of trustees the institution cannot be represented unless all the trustees are made parties. If the temples are to be bound by this judgment, all the trustees are necessary parties. But the present suit is framed as against the first defendant restraining him from in any way objecting to the payment of rent by the second defendant Board to the plaintiff. As our learned brother Kailasam, J., points out, the suit is not against the first defendant in his capacity as trustee appointed by the Religious Endowments Board. It follows that this plea of non-joinder of other trustees also fails."

10. This decision was relied on by the learned counsel for the petitioners to submit that a religious institution cannot be represented unless all the trustees are made parties. But I am not able to accept this contention. In the above judgment it was observed that if the temples are to be bound by the judgment all the trustees are necessary parties. But in the present case, the suit itself is filed by the temple against private parties. Further in the cause title of I.A.No.813/99 it is shown that the third trustee C.V.Muthu Chettiar has also expired, but the prayer in the petition is for impleading the proposed 6th plaintiff only. But in his deposition, P.W.1, who is the second trustee stated that the petition has been filed to implead the 5th and 6th petitioners, as plaintiffs in the place of 3rd and 1st plaintiffs respectively. But it was not explained as to why there is no prayer separately for impleading C.R.Shanmuga Chettiar in the place of the deceased C.V.Muthu Chettiar as 3rd plaintiff. Even now it is not explained before this court as to why the trustee appointed in the place of deceased third trustee was not sought to be impleaded whereas only the trustee appointed in the place of the deceased 1st trustee alone is sought to be impleaded.

11. The learned counsel for the petitioners relied on the judgment reported in 1998-III M.L.J. 28 Cited supra for the proposition that whatever may be the number of trustees, the office is the joint one and the co-trustees all form as it were, one collective trust and therefore must execute the duties of trustee in their joint capacity.

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12. The learned counsel also relied on the judgment of the Hon'ble Supreme Court reported in 2000(2) Supreme 195 cited supra to contend that the right conferred on the Board of Trustees, whenever a vacancy occurs, is not done away with altogether by the Hindu Religious Endowment Act, 1951.

13. But the learned counsel for the petitioners is not able to explain as to why no petition was filed to implead a trustee in the place of the deceased C.V.Muthu Chettiar and why the petitioners wanted to implead only the 3rd revision petitioner herein in the place of P.N.Munuswamy Chettiar. If there is merit in the contention that the Board should be represented by all the trustees, then, a trustee should also be impleaded in the place of C.V.Muthu Chettiar. Moreover the suit is not filed by the Board of trustees but it is filed by the temple represented by its trustees. It is also surprising to note that in the cause title of the petition in I.A.No.813/1999, the proposed 6th plaintiff, i.e., the 3rd revision petitioner was also shown as a party/proposed 6th plaintiff, even though the petition was filed by the temple represented by its trustees.

14. For the above reasons, I do not find any merits in the Civil Revision Petition filed under Article 227 of the Constitution of India and hence the same is dismissed. No costs. C.M.P.No.15473/2004 is also dismissed.

15. Considering the fact that the suit is of the year 1994, I direct the trial court to conduct the suit proceedings on day to day basis and dispose of the suit on merits within one month from the date of receipt of copy of this order.

sks

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To
The District Munsif, Ponneri.

+ 1 cc to Mr. K. Jayaraman, Advocate SR No.33290
+ 1 cc to Mr. R. Sundaramurthy, Advocate SR No.33770

LA(CO)
SR/17.8.2006

Pre-delivery order,
C.R.P.(PD)1659/04.

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